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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/805,304
Filing Date: March 22, 2004
Appellant(s): KLASSEN ET AL.

Jeffery Washville
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/22/08 appealing from the Office action mailed 4/23/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6905335	Fischer	6-2005
6253404	Boland et al.	7-2001
5765252	Carr	6-1998
6836917	Blaustein et al.	1-2005

3987549	Robertelli	10-1976
4406032	Diamant	9-1983
6612770	Aoyama	9-2003
6745427	Trenz et al.	7-2004
6000410	Tortorice	12-1999
20040161289	Silberman	8-2004
5392482	Drulias et al.	2-1995
5706545	Yamada	1-1998
20020008047	Hammond	1-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-6, 12, 16, 28, 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer (USPN 6905335) in view of Boland et al. (USPN 6253404) in view of Carr (USPN 5765252) and further in view of Blaustein et al. (USPN 6836917).

Fischer teaches a tooth cleaning kit comprising a universal handle and various sized cleaning tips for attaching to the handle. Fischer's kit however fails to include a cleaning device with cleaning tips as claimed and also fails to include cleaning end portions as claimed. Additionally, Fischer fails to teach a handle with a decreased diameter between the ends.

Boland teaches a tooth cleaning device comprising a universal handle (11) and a plurality of cleaning tips (figures 5-6 and 8-9) (claim 1). The cleaning tips progress in size from smaller to larger (figure 8-9 show the smallest and figures 5-6 show the larger) and at least one of the tip

have a surface features includes a groove (figure 5A) (claim 2). One of the cleaning tips has a multi-directional protrusion and brush-like shapes (figure 6A and 6D show the protrusions (on the tip) and the brush-like shapes (64)) (claim 3). The cleaning tips are characterized by a 360 degree radially outward omni-directional cleaning surface shape (the cleaning tips all have cleaning surfaces that extend 360 from the center) (claim 1 and 4). The cleaning tip (figure 8A) has a generally oblong shape when viewed from the top end of the cleaning tip (claim 5). The cleaning tips are tapered in shape toward the top end when viewed from the front and or side (figures 5-6) (claim 6 and 12). The cleaning tips can be non-round shapes (figure 8A) (claim 28). The plurality of cleaning tips are secured onto the universal handle and a toothbrush is formed. The toothbrush has bristles having a 360 degree shape, with an outer bristles shape that is at least partially non-round when viewed from the top end of the toothbrush (figure 8A) (claim 31). The plurality of cleaning tips are secured onto the universal handle and a toothbrush is formed. The toothbrush has bristles having a 360 degree shape, with an outer bristles shape that is at least partially tapered when viewed from the front of the toothbrush (figure 8A) (claim 32).

Carr teaches a tooth cleaning device having various shaped cleaning end portions (claim 1). The cleaning end portions progress in size from smaller to larger (figure 1-5 are for an adult while figure 7 is for a child and figure 8 is the largest cleaning device being used on an entire hand) (claim 2). The cleaning end portion in figure 8 has a generally oblong shaped when viewed from the top end of the end portion since the length is longer than the width (claim 5). The end portions have a tapered shape when view from the front (all the figures show that the device tapered from the sides to the top) (claim 6). The cleaning end portions has a non-round shape (figure 8) (claim 28). The cleaning end portions are designed to fit on a finger (figure 1)

(claim 1). Blaustein teaches a toothbrush comprising a handle with an oblong shape when viewed from the bottom (figures 2 and 3 show the dimensions of the handle) (claim 16). Also Blaustein's handle comprises a middle portion that is smaller in diameter than the top and bottom of the handle.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the kit of Fischer with the universal handle cleaning tips and cleaning end portions as taught by Carr and Borland. It is known in the art that kits can be used to contain all the necessary elements for certain applications. Fischer teaches using a kit comprising many different tools for cleaning teeth however fails to teach the exact tools as claimed. It would have been obvious to one of skill in the art to interchange the tools in Fischer's kit for the tools of Boland and Carr so that all the proper tools for cleaning teeth are located in a kit.

Additionally, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the shape of the universal handle of Boland since making the middle portion of the handle have a smaller diameter will provide more support for the user's thumb and forefinger to make using the toothbrush easier and more comfortable (col. 4, lines 33-38). Also modifying the shape of the handle so that it is oblong or elliptical or oval is obvious since changing the size of a handle is a modification that has been considered to be within the level of ordinary skill in the art. *In re Rose, 105 USPQ 237,*

Claims 1-6, 12, 16, 28, 31-32, 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer (USPN 6905335) in view of Robertelli (USPN 3987549) in view of Carr (USPN 5765252) and further in view of Blaustein et al. (USPN 6836917).

Fischer teaches a tooth cleaning kit comprising a universal handle and various sized cleaning tips for attaching to the handle. Fischer's kit however fails to include a cleaning device as with cleaning tips as claimed and also fails to include cleaning end portions as claimed. Additionally, Fischer fails to teach a handle with a decreased diameter between the ends.

Robertelli teaches a tooth cleaning device comprising a universal handle (12) and a plurality of cleaning tips (figure 2-7) (claim 1). The cleaning tips progress in size from smaller to larger (figure 4 shows the smallest, while figure 5 is the largest) and at least one of the tip have a surface features includes a groove (figure 3) (claim 2). One of the cleaning tips has a multi-directional protrusion and brush-like shapes (figure 5 shows bristle protrusions and the brush-like shapes) (claim 3). The cleaning tips are characterized by a 360 degree radially outward omni-directional cleaning surface shape (the cleaning tips all have cleaning surfaces that extend 360 from the center) (claim 4). The cleaning tips are tapered in shape toward the top end when viewed from the front and or side (figures 5-6) (claim 6 and 12). The cleaning tips can be non-round shapes (col. 3, lines 10-13) (claim 28). The plurality of cleaning tips are secured onto the universal handle and a toothbrush is formed. The toothbrush has bristles having a 360 degree shape, with an outer bristles shape that is at least partially non-round when viewed from the top end of the toothbrush (col. 3, lines 10-13) (claim 31). The plurality of cleaning tips are secured onto the universal handle and a toothbrush is formed. The toothbrush has bristles having a 360 degree shape, with an outer bristles shape that is at least partially tapered when viewed from the front of the toothbrush (figure 2) (claim 32). The plurality of cleaning tips are secured onto the universal handle and a toothbrush is formed. The toothbrush has bristles having omni-directional bristles, which rotate around the longitudinal axis of the universal handle at a variable speed

(switch 16 control the speed) (claim 34). The toothbrush changed speed in response to rotational acceleration caused by the user (switch 16 controls the speed) (claim 35).

With regards to the limitation in claim 5 regarding the cleaning tips, Robertelli teaches all the essential elements of the claimed invention however fails to teach that the cleaning tips have a generally oval or elliptical or oblong shape when viewed from the top end of the cleaning tips. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to use a cleaning tip with an oblong shaped cleaning tip because Appellant has not disclosed that an oblong cleaning tip provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Appellant's invention to perform equally well with a round or circular tip as taught by Robertelli or the claimed oblong shape because both shapes perform the same function of cleaning teeth equally well. Therefore, it would have been obvious to one of ordinary skill in the art to modify Robertelli to obtain the invention as specified in claim 5.

Carr teaches a tooth cleaning device having various shaped cleaning end portions (claim 1). The cleaning end portions progress in size from smaller to larger (figure 1-5 are for an adult while figure 7 is for a child and figure 8 is the largest cleaning device being used on an entire hand) (claim 2). The cleaning end portion in figure 8 has a generally oblong shaped when viewed from the top end of the end portion since the length is longer than the width (claim 5). The end portions have a tapered shaped when view from the front (all the figures show that the device tapered from the sides to the top) (claim 6). The cleaning end portions has a non-round shape (figure 8) (claim 28). The cleaning end portions are designed to fit on a finger (figure 1) (claim 1). Blaustein teaches a toothbrush comprising a handle with an oblong shape when

viewed from the bottom (figures 2 and 3 show the dimensions of the handle) (claim 16). Also Blaustein's handle comprises a middle portion that is smaller in diameter than the top and bottom of the handle.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the kit of Fischer with the universal handle cleaning tips and cleaning end portions as taught by Carr and Robertelli. It is known in the art that kits can be used to contain all the necessary elements for certain applications. Fischer teaches using a kit comprising many different tools for cleaning teeth however fails to teach the exact tools as claimed. It would have been obvious to one of skill in the art to interchange the tools in Fischer's kit for the tools of Robertelli and Carr so that all the proper tools for cleaning teeth are located in a kit.

Additionally, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the shape of the universal handle of Robertelli since making the middle portion of the handle have a smaller diameter will provide more support for the user's thumb and forefinger to make using the toothbrush easier and more comfortable (col. 4, lines 33-38). Also modifying the shape of the handle so that it is oblong or elliptical or oval is obvious since changing the size of a handle is a modification that has been considered to be within the level of ordinary skill in the art. *In re Rose, 105 USPQ 237.*

Claims 7-10 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland, Carr and Blaustein as applied to claim 1 above and further in view of Diamant (USPN 4406032) or Fischer, Robertelli, Carr and Blaustein as applied to claim 1 above and further in view of Diamant (USPN 4406032).

Fischer, Boland or Robertelli, Carr and Blaustein teach all the essential elements of the claimed invention. Boland and Robertelli teach that the cleaning tips have a generally planar surface (Boland, figure 8A, top and bottom horizontal surface of 80; Robertelli, figure 3 shows the planar surface being located at end of 34 opposite 28) (claim 8). Also the cleaning tips have raised ridges on a surface thereof (Boland, figure 6D; Robertelli, figure 3) (claim 9). The cleaning tips have raised bristles (Boland, flat sides bristles figure 6D; Robertelli, cylindrical shaped bristles figure 3) (claim 10). The references however fail to teach that the cleaning tips and the cleaning end portions are made from a resilient material such as foam (claim 7) and that the bristles can be arranged in a helical pattern (claim 33). Diamant teaches a toothbrush with a head made from a foam rubber (col. 3, lines 64-68). The head comprises bristles that take the form of a helical spring (col. 2, lines 62-65). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the cleaning tips of Boland or Robertelli so that they included a helical shaped cleaning tip as taught by Diamant since the helical shape will produce surface irregularities in the brush surface which will increase the brushing efficiency (col. 3, lines 56-58). Additionally, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make all the cleaning tips of Boland and Robertelli from foam as taught by Diamant, since it has been held within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. *In re Leshin, 125 USPQ 416.* Using a foam material for the cleaning will help in producing surface irregularities in the brush surface which will increase brushing efficiency (col. 4, lines 4-9).

Claims 13 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland, Carr and Blaustein as applied to claim 1 above and further in view of Aoyama (USPN 6612770) or Fischer, Robertelli, Carr and Blaustein as applied to claim 1 above and further in view of Aoyama (USPN 6612770).

Fischer, Boland or Robertelli, Carr and Blaustein teach all the essential elements of the claimed invention however fail to teach that the cleaning tip has an air hole in the end (claim 13) and that the handle has an air passage therein, wherein the diameter of the air hole in the cleaning tip is substantially the same diameter as the air passage in the handle. Aoyama teaches a toothbrush comprising a handle with an air passage (8) and cleaning tips (2a-2c) with air holes (9) that correspond to the diameter of the air passage. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Boland and Robertelli with an air passageway in the handle and in the cleaning tips as taught by Aoyama so that air can flow between the handle and the cleaning tips to flush away or blow off leavings present around the roots of the bristles, facilitating the cleaning of the toothbrush (col. 4, lines 55-69). While Aoyama does not teach using the air passageway as a means for breathing through, it is clearly capable of performing this function. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claims 21-22 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland, Carr and Blaustein as applied to claim 1 above and further in view of

Trenz et al. (USPN 6745427) or Fischer, Robertelli, Carr and Blaustein as applied to claim 1 above and further in view of Trenz et al. (USPN 6745427).

Fischer, Boland or Robertelli, Carr and Blaustein teach all the essential elements of the claimed invention however fail to teach that the cleaning tips are secured onto the universal handle by means of a securing mechanism that can be unlocked with a cam mechanism by pushing a rod from the bottom of the universal handle (claim 21). Additionally the references fail to teach that there is a button on the outer surface thereof which allows the rod to be pushed axially by a user and the button has sufficient elastic force to return the rod and the securing mechanism to a locked position (claim 22). The references also fail to teach that that cleaning tips are inserted and removed from the handle at an angle relative to the longitudinal center axis of the handle (claim 27). Boland and Robertelli teach that the cleaning tips are secured to the universal handle by means of snap fitting. When removing the tips the user has to grab the cleaning tips and pull with force when removing them. The cleaning tips of Boland and Robertelli are inserted and removed from the handle at an angle relative to the longitudinal axis of the handle. For Boland the angle of insertion and removal is 90 degrees (figure 2) and for Robertelli the angle is 180 degrees (figure 1). Trenz teaches a cleaning device with a handle (5) and a brush element (1). The brush is attached to the handle by means of a securing mechanism (figure 3). The securing mechanism can be unlocked with a cam mechanism by pushing a rod (4a) from the bottom of the handle. There is a button (4) located on the outer surface of the handle, which has sufficient elastic force (12) to return the locking mechanism to a locked position. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Boland and Robertelli universal handle with a securing mechanism and cam

mechanism as taught by Trenz for holding and releasing the cleaning tips so that the cleaning tips do not need to be touched by a user when removing. The cam mechanism would eliminate the necessity of touching the cleaning tips by hand (col. 1, lines 45-46). This in turn would prevent the spreading of bacteria from the used cleaning tip to the users hand when removing.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland, Carr and Blaustein as applied to claim 1 above and further in view of Tortorice (USPN 6000410) or Fischer, Robertelli, Carr and Blaustein as applied to claim 1 above and further in view of Tortorice (USPN 6000410).

Fischer, Boland or Robertelli, Carr and Blaustein teach all the essential elements of the claimed invention however fail to teach that the handle is filled with a fluid that changes appearance during rigorous agitation. Tortorice teaches a toothbrush with a handle that comprises a fluid enclosed within. There are small objects which float within the fluid and when the handle is agitated the objects move around within the fluid solution changing the appearance of the handle. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the handle of Boland or Robertelli with a decorative handle such as the one taught by Tortorice for ornamental purposes. Changing the aesthetic (ornamental) design of an object is a modification that has been considered to within the level of ordinary skill in the art. *In re Seid, 73 USPQ 431, 433.*

Claims 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland, Carr and Blaustein as applied to claim 1 above and further in view of Tortorice (USPN 6000410) and Silberman (USPN 2004/0161289) or Fischer, Robertelli,

Carr and Blaustein as applied to claim 1 above and further in view of Tortorice (USPN 6000410) and Silberman (USPN 2004/0161289).

Fischer, Boland or Robertelli, Carr and Blaustein teach all the essential elements of the claimed invention however fail to teach that the handle is filled with two or more non-emulsifying fluids of different colors and densities which mix together during agitation and separate again when agitation stops. Tortorice teaches a toothbrush with a handle that comprises a fluid enclosed within. There are small objects which float within the fluid and when the handle is agitated the objects move around within the fluid solution changing the appearance of the handle. Silberman teaches a decorative device comprising a colored water-oil mixture ([0018]). When the device is agitated the water and oil mix and then separate when agitation stops. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the handle of Boland or Robertelli with a decorative handle such as the one taught by Tortorice filled a colored water-oil mixture as taught by Silberman for ornamental purposes. Changing the aesthetic (ornamental) design of an object is a modification that has been considered to within the level of ordinary skill in the art. *In re Seid, 73 USPQ 431, 433.*

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland, Carr and Blaustein as applied to claim 29 above and further in view of Drulias et al. (USPN 5392482) or Fischer, Robertelli, Carr and Blaustein as applied to claim 1 above and further in view of Drulias et al. (USPN 5392482).

Fischer, Boland or Robertelli, Carr and Blaustein teach all the essential elements of the claimed invention. Carr teaches that the cleaning devices comprises a cleaning member (64) molded to a flexible sleeve (60), wherein the flexible sleeve has an integrated finger loop (68)

which is placed on a users finger. Carr however fails to teach that the cleaning member is made from a foam material. Drulias teaches a finger brush comprising a brush pad made from a foam material (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the cleaning member of Carr from a foam material as taught by Drulias, since it has been held within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. *In re Leshin, 125 USPQ 416.*

Claims 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Robertelli, Carr and Blaustein as applied to claim 34 above and further in view of Boland et al. (USPN 6253404).

Fischer, Robertelli, Carr and Blaustein teach all the essential elements of the claimed invention however fail to teach that the toothbrush is power to rotate the head of the toothbrush a number of degrees and then counter rotate the head a lesser number of degrees. Boland teaches a toothbrush with a brush head that rotates as well as oscillates. The brush head can be modified to do either motion (col. 8, lines 5-13). While Robertelli only teaches a rotating head, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the head so that it oscillates also. Allowing the head to oscillate as well as rotate increases the cleaning capabilities of the brush head. Additionally, one of skill in the art would by routine experimentation find the optimum number of degrees the head would need to rotate in both directions (clockwise and counterclockwise) to achieve the best possible cleaning.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Robertelli, Carr, Blaustein and Boland as applied to claim 36 above.

Fischer, Robertelli, Carr, Blaustein and Boland teach all the essential elements of the claimed invention however fail to teach that the handle has a graphic or grip pattern characterized by two or more circular, elliptical or oblong shapes of various sizes connected by substantially straight lines. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the handle of Robertelli with a decorative handle such as the one claimed for ornamental purposes. Changing the aesthetic (ornamental) design of an object is a modification that has been considered to within the level of ordinary skill in the art. *In re Seid, 73 USPQ 431, 433.* Additionally, it would have been obvious to a person of ordinary skill in the art to use a handle with shapes connected by straight lines because Appellant has not disclosed that the ornamental design provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Appellant's invention to perform equally well with the gripping means as taught by Robertelli or the claimed ornamental handle because both handles perform the same function of preventing the handle from slipping for a users hand equally well. Therefore, it would have been obvious to one of ordinary skill in the art to modify Robertelli to obtain the invention as specified in claim 37.

Fischer, Boland or Robertelli, Carr and Blaustein teach all the essential elements of the claimed invention however fail to teach that the handle comprises a first half portion and a second half portion which are snapped together to form a universal handle. Each of halves has a male protruding ridge on one side and a female receiving slot on the other side, which engage as the halves are snapped together. Yamada teaches a toothbrush comprising a handle with two halves (14a, 14b). The halves each have male protruding ridges (not shown, col. 3, lines 55-60)

and female receiving slots (44). The male ridges snap into the female slots causing the two halves to connect together. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the handles of Boland or Robertelli with the handle halves that snap together as taught by Yamada since having the handle being separate pieces allows the mechanical elements within the handle to be accessible and therefore fixable necessary. It would save money and production costs, if a user could replace only a broken part rather than they whole toothbrush. Additionally, using snap fitting elements would allow for easy access without any tools.

Claims 39-40, 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland, Carr, Drulias and Blaustein.

Fischer teaches a tooth cleaning kit comprising a portable case carrying a universal handle and various sized cleaning tips for attaching to the handle (claim 39). Fischer's case includes a structural support comprising a foam insert shaped to receive various components of the kit (claim 44). Fischer's kit however fails to include a cleaning device as with cleaning tips as claimed and also fails to include cleaning end portions as claimed. Additionally, Fischer fails to teach a handle with a decreased diameter between the ends.

Boland teaches a tooth cleaning device comprising a universal handle (11) and a plurality of cleaning tips (figures 5-6 and 8-9) (claim 39). The cleaning tips progress in size from smaller to larger (figure 8-9 show the smallest and figures 5-6 show the larger). The smaller tips (figure 8A) could be used for children ages one to two since they are the smallest (claim 39). There are cleaning tips for older children (figure 5A, 6A) (claim 39). The cleaning tips with grooves in figure 5A could be used for children ages two to three (claim 42) and the cleaning tips with

bristles (64) in figure 6A could be used for children ages three to four (claim 43). The age the children are when they use the cleaning tips is intended use and holds no patentable weight. The cleaning tips could be used on any age child or adult for that matter. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Carr teaches a cleaning device comprising cleaning end portions. The cleaning device comprises a cleaning member (64) molded to a flexible sleeve (60), wherein the flexible sleeve has an integrated finger loop (68), which is placed on a users finger (claim 39). This cleaning device could be used to clean infant's teeth and gums (claim 40). Carr however fails to teach that the cleaning member is made from a foam material. Drulias teaches a finger brush comprising a brush pad made from a foam material (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the cleaning member of Carr from a foam material as taught by Drulias, since it has been held within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. *In re Leshin, 125 USPQ 416.* Blaustein teaches a toothbrush comprising a handle with an oblong shape when viewed from the bottom (figures 2 and 3 show the dimensions of the handle). Also Blaustein's handle comprises a middle portion that is smaller in diameter than the top and bottom of the handle.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the kit of Fischer with the universal handle cleaning tips and cleaning end portions as taught by Borland and Carr in view of Drulias. It is known in the art that kits can be

used to contain all the necessary elements for certain applications. Fischer teaches using a kit comprising many different tools for cleaning teeth however fails to teach the exact tools as claimed. It would have been obvious to one of skill in the art to interchange the tools in Fischer's kit for the tools of Boland and Carr in view of Drulias so that all the proper tools for cleaning teeth are located in a kit.

Additionally, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the shape of the universal handle of Boland since making the middle portion of the handle have a smaller diameter will provide more support for the user's thumb and forefinger to make using the toothbrush easier and more comfortable (col. 4, lines 33-38). Also modifying the shape of the handle so that it is oblong or elliptical or oval is obvious since changing the size of a handle is a modification that has been considered to be within the level of ordinary skill in the art. *In re Rose, 105 USPQ 237,*

Claims 39-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Robertelli, Carr, Drulias and Blaustein.

Fischer teaches a tooth cleaning kit comprising a portable case carrying a universal handle and various sized cleaning tips for attaching to the handle (claim 39). Fischer's case includes a structural support comprising a foam insert shaped to receive various components of the kit (claim 44). Fischer's kit however fails to include a cleaning device as with cleaning tips as claimed and also fails to include cleaning end portions as claimed. Additionally, Fischer fails to teach a handle with a decreased diameter between the ends.

Robertelli teaches a tooth cleaning device comprising a universal handle (12) and a plurality of cleaning tips (figures 2-7) (claim 39). The cleaning tips progress in size from smaller

to larger (figure 4 shows the smallest and figures 5 shows the largest). The smaller tips (figure 4) could be used for children ages one to two since they are the smallest and have a smooth surface (claim 39 and 41). There are cleaning tips for older children (2, 3, 5, 7) (claim 39). The cleaning tips in figure 3 could be used for children ages two to three and have a plurality of grooves (claim 42) and the cleaning tips with bristles in figure 5 could be used for children ages three to four (claim 43). The age the children are when they use the cleaning tips is intended use and holds no patentable weight. The cleaning tips could be used on any age child or adult for that matter. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Carr teaches a cleaning device comprising cleaning end portions. The cleaning device comprises a cleaning member (64) molded to a flexible sleeve (60), wherein the flexible sleeve has an integrated finger loop (68), which is placed on a users finger (claim 39). This cleaning device could be used to clean infant's teeth and gums (claim 40). Carr however fails to teach that the cleaning member is made from a foam material. Drulias teaches a finger brush comprising a brush pad made from a foam material (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the cleaning member of Carr from a foam material as taught by Drulias, since it has been held within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. *In re Leshin, 125 USPQ 416.* Blaustein teaches a toothbrush comprising a handle with an oblong shape when viewed from the bottom (figures 2

and 3 show the dimensions of the handle). Also Blaustein's handle comprises a middle portion that is smaller in diameter than the top and bottom of the handle.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the kit of Fischer with the universal handle cleaning tips and cleaning end portions as taught by Robertelli and Carr in view of Drulias. It is known in the art that kits can be used to contain all the necessary elements for certain applications. Fischer teaches using a kit comprising many different tools for cleaning teeth however fails to teach the exact tools as claimed. It would have been obvious to one of skill in the art to interchange the tools in Fischer's kit for the tools of Robertelli and Carr in view of Drulias so that all the proper tools for cleaning teeth are located in a kit.

Additionally, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the shape of the universal handle of Robertelli since making the middle portion of the handle have a smaller diameter will provide more support for the user's thumb and forefinger to make using the toothbrush easier and more comfortable (col. 4, lines 33-38). Also modifying the shape of the handle so that it is oblong or elliptical or oval is obvious since changing the size of a handle is a modification that has been considered to be within the level of ordinary skill in the art. *In re Rose, 105 USPQ 237,*

Claims 45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland, Carr, Drulias and Blaustein as applied to claim 44 above and further in view of Hammond (PGPub 20020008047) or Fischer, Robertelli, Carr, Drulias and Blaustein as applied to claim 44 above and further in view of Hammond (PGPub 20020008047).

Fischer, Boland or Robertelli, Carr, Drulias and Blaustein teach all the essential elements of the claimed invention. While the kit of Fischer comprises toothpaste (34a, 34b) (claim 46), the kit fails to further include a CD with instructions and a laminated instruction car for directions as to how to use the kit. Hammond teaches a kit for implementing first aid. The kit comprises an instruction video (48) and instruction card (44). While the kit of Hammond is not a kit for cleaning, it still related art, since it includes an instruction video and card in the kit to teach the user how to use the device in the kit. It would have been obvious to one of ordinary skill in the art to include an instructional video and card in the kit of Fischer so that the user knows how to use all the cleaning tips and cleaning end portions properly. Additionally, even though Hammond teaches an instruction tape (as shown in the drawings), it would have been obvious to modify the video to a compact disk since it is known in the art that they are equivalent structures that can be used interchangeably.

(10) Response to Argument

Issue 1: Claims 1-6, 12, 16, 28, 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer (USPN 6905335) in view of Boland et al. (USPN 6253404) in view of Carr (USPN 5765252) and further in view of Blaustein et al. (USPN 6836917).

The appellant argues that the finger brush in figure 7 of Carr is to be used on children's fingers to clean children's teeth and not to be used on adult fingers for cleaning children's teeth. In response, first, the size of the adult's finger will determine whether or not the finger brush will fit on an adult's finger. The brush could be fit onto an adult's pinky finger depending on how big the adult's finger is. Further the specification of Carr states that the ring (68) on the brush is made of a flexible material so as to accommodate different widths of fingers. Therefore a child

with larger fingers and an adult with small finger could both use the brush since the ring is flexible. Second, the claim does not state whose finger the oral care device is to be fit on. The claim only states that the device provides for oral cleaning of infants and toddlers but it does not say that the brush must fit on an adult finger. Thus, the claimed oral device could be positioned on a toddler who is capable of wearing the finger brush and having it effectively clean when the toddler is sucking their finger.

The appellant further argues that Blaustein fails to teach a handle having a smaller diameter at the middle than at the ends and configured for self use by a child. In response, figure 3 clearly shows the center portion (show by reference number 21 on figure 3) of the handle having a smaller diameter. With regards to the limitation that it is configured for self use by a child, this is considered an intended use limitation. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentable distinguish the claimed invention from the prior art. If the prior art is capable of performing the intended use, then it meets the claim. Since a child is clearly capable of holding the handle of Blaustein or even Boland, the claim limitations are met by the prior art. The claim provides no structural difference between an adult handle and a child's handle and therefore the limitation holds no patentable weight.

The appellant argues that Boland fails to teach omni-directional cleaning tips dimension for use within a vestibule of children 1-4 years old. As stated in the final rejection, the cleaning tips of Boland are characterized by a 360 degree radially outward omni-directional cleaning surface shape since all the cleaning tips have cleaning surfaces that extend 360 degrees from the center. Further the limitation that the cleaning tips are dimensioned for use within a vestibule of

children 1-4 years old is again considered to be intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentable distinguish the claimed invention from the prior art. If the prior art is capable of performing the intended use, then it meets the claim. Since the cleaning tips are clearly capable of being used in a child of 1-4 years old mouth, the claim limitations are met by the prior art. The claim provides no structural difference between a 1-4 year olds cleaning tip and an adult cleaning tip and therefore the limitation holds no patentable weight. Age does not determine size of mouth. These are relative sizes that vary with each individual, whether child or adult.

The appellant also argues that Fischer teaches away from a children's cleaning or training kit as it used abrasive tips, drills, picks, etc... In response, the kit of Fischer was solely used to show a tooth cleaning device kit. The other prior art references were used to meet all the claim limitation regarding the type of cleaning tips used in the kit. Thus Fischer's kit was modified with the previously discussed prior art's cleaning tips to create a kit comprising all the essential elements necessary for cleaning children's teeth.

Issue 2: Claims 1-6, 12, 16, 28, 31-32, 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer (USPN 6905335) in view of Robertelli (USPN 3987549) in view of Carr (USPN 5765252) and further in view of Blaustein et al. (USPN 6836917).

The appellant argues that the finger brush in figure 7 of Carr is to be used on children's fingers to clean children's teeth and not to be used on adult fingers for cleaning children's teeth. In response, first, the size of the adult's finger will determine whether or not the finger brush will fit on an adult's finger. The brush could be fit onto an adult's pinky finger depending on how

big the adult's finger is. Further the specification of Carr states that the ring (68) on the brush is made of a flexible material so as to accommodate different widths of fingers. Therefore a child with larger fingers and an adult with small finger could both use the brush since the ring is flexible. Second, the claim does not state whose finger the oral care device is to be fit on. The claim only states that the device provides for oral cleaning of infants and toddlers but it does not say that the brush must fit on an adult finger. Thus, the claimed oral device could be positioned on a toddler who is capable of wearing the finger brush and having it effectively clean when the toddler is sucking their finger.

The appellant further argues that Blaustein fails to teach a handle having a smaller diameter at the middle than at the ends and configured for self use by a child. In response, figure 3 clearly shows the center portion (show by reference number 21 on figure 3) of the handle having a smaller diameter. With regards to the limitation that it is configured for self use by a child, this is considered an intended use limitation. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentable distinguish the claimed invention from the prior art. If the prior art is capable of performing the intended use, then it meets the claim. Since a child is clearly capable of holding the handle of Blaustein or even Boland, the claim limitations are met by the prior art. The claim provides no structural difference between an adult handle and a child's handle and therefore the limitation holds no patentable weight.

The appellant argues that Robertelli fails to teach omni-directional cleaning tips dimension for use within a vestibule of children 1-4 years old. As stated in the final rejection, the cleaning tips of Robertelli are characterized by a 360 degree radially outward omni-

directional cleaning surface shape since all the cleaning tips have cleaning surfaces that extend 360 degrees from the center. Further the limitation that the cleaning tips are dimensioned for use within a vestibule of children 1-4 years old is again considered to be intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentable distinguish the claimed invention from the prior art. If the prior art is capable of performing the intended use, then it meets the claim. Since the cleaning tips are clearly capable of being used in a child of 1-4 years old mouth, the claim limitations are met by the prior art. The claim provides no structural difference between a 1-4 year olds cleaning tip and an adult cleaning tip and therefore the limitation holds no patentable weight. Age does not determine size of mouth. These are relative sizes that vary with each individual, whether child or adult.

The appellant also argues that Robertelli is capable of rotating at a speed up to approximately 10,000 revolutions and this rpm is not for self cleaning purposes of an adult or a child. This statement is the applicant's opinion of what is considered "self" cleaning. It is clear that this device is clearly capable of being used by a user themselves to clean their teeth. There is nothing preventing the device from being used in this manner. The structural elements are still the same and therefore, it is considered intended use of the invention as to how the device is to be used.

The appellant also argues that Fischer teaches away from a children's cleaning or training kit as it used abrasive tips, drills, picks, etc... In response, the kit of Fischer was solely used to show a tooth cleaning device kit. The other prior art references were used to meet all the claim limitation regarding the type of cleaning tips used in the kit. Thus Fischer's kit was modified

with all the previously discussed prior art's cleaning tips to create a kit comprising all the essential elements necessary for cleaning children's teeth.

Issue 3: Claims 7-10 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland, Carr and Blaustein as applied to claim 1 above and further in view of Diamant (USPN 4406032) or Fischer, Robertelli, Carr and Blaustein as applied to claim 1 above and further in view of Diamant (USPN 4406032).

The appellant argues that Diamant fails to teach resilient foam. However as stated in column 3, lines 64-68, the brush surface may consist of foam rubber or soft rubber. Foam rubber is considered to be resilient foam because rubber is an elastomeric material and elastomers are known in the art to be resilient. Therefore, the foam rubber as taught by Diamant reads on the claim limitation of resilient foam. The appellant also argues that Robertelli does not teach a planar surface on the cleaning tip. In response, the cleaning tip of Robertelli includes elements 30, 32 and 34 and thus the planar surface of the cleaning tip is shown in figure 3 at an end of 34 opposite reference number 28. The appellant argues that Boland does not have a planar surface on the cleaning tip however, figure 8A clearly shoes that the top and bottom surface of the bristles (80) have a horizontal planar surface. The appellant also argues that Boland teaches a plurality of depression and not raised ridges. In response, it is clear to one of skill in the art that the portions surrounding the depressions can be considered raised ridges. Where there are depressions, there must be raised portions as well which surround the depression thus making them depressed. The appellant argues that the cylindrical bristles of Robertelli are not part of the cleaning tip. As stated above, the cleaning tip is considered to be elements 30, 32 and 34. Element 34 comprises the cylindrical bristles as shown in figure 3 and it is clear that these

cylindrical portions are capable of coming into contact with the users mouth and therefore can be considered part of the cleaning tip. The appellant argues that the helical formation of Diamant is not similar to the appellant's figure 52. In response, the claim only states that the bristles are in a helical pattern which Diamant clearly teaches. The claim does not include any limitations to further distinguish the appellant's helical bristles from Diamant's and therefore it would have been obvious to use the helical bristles of Diamant as one of the various cleaning heads used in the tooth brushing kit.

Issue 4: Claims 13 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland, Carr and Blaustein as applied to claim 1 above and further in view of Aoyama (USPN 6612770) or Fischer, Robertelli, Carr and Blaustein as applied to claim 1 above and further in view of Aoyama (USPN 6612770).

The appellant argues that Aoyama fails to teach that the hole in the brush head could be used as a breathing passage. As stated in the final rejection, while Aoyama does not teach using the air passage as means for breathing, it is clearly capable of performing this function. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art is capable of performing the intended use, then it meets the claim. Thus Aoyama has all the structural elements and is capable of being used in this manner. The appellant argues that the hole of Aoyama is not in the top end of the cleaning tip. However, the claim does not provide any limitations as to what the top end is and therefore the top end is considered to be a relative term depending on how the toothbrush is being held.

The holes in the head of Aoyama could be considered to be in the top end if the bristles were located upward (opposite of what is shown in figure 1).

Issue 5: Claims 21-22 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland, Carr and Blaustein as applied to claim 1 above and further in view of Trenz et al. (USPN 6745427) or Fischer, Robertelli, Carr and Blaustein as applied to claim 1 above and further in view of Trenz et al. (USPN 6745427).

The appellant argues that Trenz fails to teach a cam mechanism that is released by a button. In response, Trenz teaches a cleaning device that is attached to a head and held by friction fit due to a ball mechanism (7). After the cleaning device is ready for disposal, a button (4) is pressed at the bottom of the handle. This button causes the ball mechanism (7) to be moved inward allowing the cleaning device to be removed from the handle. Thus Trenz reads on the claim limitations.

Issue 6: Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland, Carr and Blaustein as applied to claim 1 above and further in view of Tortorice (USPN 6000410) or Fischer, Robertelli, Carr and Blaustein as applied to claim 1 above and further in view of Tortorice (USPN 6000410).

The appellant argues that Tortorice fails to teach a reduced diameter handle and a smaller tip for fitting in the vestibule of a child. In response, Tortorice is used solely to show that it is well known to have handles that are filled with fluids that change appearance during rigorous agitation. The prior art of Boland, Robertelli, Carr and Blaustein teach all the essential elements of the claim including a reduced diameter handle and various sized cleaning tips.

Issue 7: Claims 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland, Carr and Blaustein as applied to claim 1 above and further in view of Tortorice (USPN 6000410) and Silberman (USPN 2004/0161289) or Fischer, Robertelli, Carr and Blaustein as applied to claim 1 above and further in view of Tortorice (USPN 6000410) and Silberman (USPN 2004/0161289).

The appellant argues that Silberman fails to teach a reduced diameter handle and a smaller tip for fitting in the vestibule of a child. In response, Silberman is used solely to show that it will well known to have handles that are filled with two or more non-emulsifying fluids of different colors or densities which mix together during agitation and separate again when agitation stops. The prior art of Boland, Robertelli, Carr and Blaustein teach all the essential elements of the claim including a reduced diameter handle and various sized cleaning tips.

Issue 8: Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland, Carr and Blaustein as applied to claim 29 above and further in view of Drulias et al. (USPN 5392482) or Fischer, Robertelli, Carr and Blaustein as applied to claim 1 above and further in view of Drulias et al. (USPN 5392482).

The appellant argues that the foam material of Drulias only covers a small portion and thus it is not omni-directional. In response, the finger brush used for infants and toddlers is not required to be omni-directional. The omni-directional limitation is only directed to the toothbrush tip sized for children 1-4 years of age. Also, the size of the foam pad is not claimed and therefore it does not matter if the foam pad only covers a small portion of the finger brush. The claim does not include any limitations that the whole finger pad needs to be made from foam. The claim states that the cleaning device further comprises a foam cleaning member

which is molded or bonded to a flexible sleeve. Thus the foam pad of Drulias clearly reads on the claim limitations.

Issue 9: Claims 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Robertelli, Carr and Blaustein as applied to claim 34 above and further in view of Boland et al. (USPN 6253404).

The appellant argues that there is no motivation to make the brush of Robertelli rotate and oscillate. In response, the examiner relies on the prior art of Boland which teaches a toothbrush that has a head that is capable of rotating and oscillating (col. 8, lines 5-13). It is clearly known in the art to have brush heads that are capable of making both movements and thus the combination of references is proper since having a brush head that can rotate and oscillate will increase the cleaning capabilities of the brush head.

Issue 10: Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Robertelli, Carr, Blaustein and Boland as applied to claim 36 above.

The appellant does not provide any additional arguments which have not been addressed in the issues above.

Issue 11: Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland, Carr and Blaustein as applied to claim 21 above and further in view of Yamada (USPN 5706545) or Fischer, Robertelli, Carr and Blaustein as applied to claim 21 above and further in view of Yamada (USPN 5706545).

The appellant states that the examiner ignored the appellants claim limitation that the male ridge that is inserted into a corresponding slot of the other half portion with a tab and recess

does not use the same leak proof seal and attachment mechanism. In response, this limitation is not claimed. The claim only includes limitations for a male ridge and a female slot wherein the male ridge and female slot engage. There are no limitations directed towards a tab and recess or to a leak proof seal. For these reasons, the appellants arguments are invalid since they pertain to structure that is not claimed.

Issue 12: Claims 39-40, 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland, Carr, Drulias and Blaustein.

The appellant argues that Fischer teaches away from a children's cleaning or training kit as it used abrasive tips, drills, picks, etc... In response, the kit of Fischer was solely used to show a tooth cleaning device kit. Other prior art references were used to meet all the claim limitation regarding the type of cleaning tips used in the kit. Thus Fischer's kit was modified with other prior art's cleaning tips to create a kit comprising all the essential elements necessary for cleaning children's teeth.

The appellant argues that Boland fails to teach different sized cleaning tips dimension for use within a vestibule of children 1-4 years old. This is an intended use limitation. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentable distinguish the claimed invention from the prior art. If the prior art is capable of performing the intended use, then it meets the claim. Since the cleaning tips are clearly capable of being used in a child of 1-4 years old mouth, the claim limitations are met by the prior art. The claim provides no structural difference between a 1-4 year olds cleaning tip and an adult cleaning tip and therefore the limitation holds no

patentable weight. Age does not determine size of mouth. These are relative sizes that vary with each individual, whether child or adult.

The appellant argues that Carr's finger brush is not made from foam. In response, Drulias was used to teach that a finger brush can comprise foam. Further the claim states that the end portion is made from foam which is molded or bonded to a flexible sleeve. This is exactly what Drulias teaches. Drulias teaches a finger brush having a portion on the end that is made from foam. This foam is molded or bonded to a flexible sleeve which fits over the user's finger.

The appellant argues that Drulias does not teach a removable tip attached to a handle. The examiner agrees with this statement however it was never suggested that Drulias teach a tip that is attached to a handle. The reference of Drulias is used solely to show the foam material on an end portion of a finger brush.

Issue 13: Claims 39-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Robertelli, Carr, Drulias and Blaustein.

The appellant argues that Fischer teaches away from a children's cleaning or training kit as it used abrasive tips, drills, picks, etc... In response, the kit of Fischer was solely used to show a tooth cleaning device kit. Other prior art references were used to meet all the claim limitation regarding the type of cleaning tips used in the kit. Thus Fischer's kit was modified with other prior art's cleaning tips to create a kit comprising all the essential elements necessary for cleaning children's teeth.

The appellant argues that the finger brush in figure 7 of Carr is to be used on children's fingers to clean children's teeth and not to be used on adult fingers for cleaning children's teeth.

In response, first, the size of the adult's finger will determine whether or not the finger brush will fit on an adult's finger. The brush could be fit onto an adult's pinky finger depending on how big the adult's finger is. Further the specification of Carr states that the ring (68) on the brush is made of a flexible material so as to accommodate different widths of fingers. Therefore a child with larger fingers and an adult with small finger could both use the brush since the ring is flexible. Second, the claim does not state whose finger the oral care device is to be fit on. The claim only states that the device provides for oral cleaning of infants and toddlers but it does not say that the brush must fit on an adult finger. Thus, the claimed oral device could be positioned on a toddler who is capable of wearing the finger brush and having it effectively clean when the toddler is sucking their finger. The appellant also argues that Carr's finger brush is not made from foam. In response, Drulias was used to teach that a finger brush can comprise foam. Further the claim states that the end portion is made from foam which is molded or bonded to a flexible sleeve. This is exactly what Drulias teaches. Drulias teaches a finger brush having a portion on the end that is made from foam. This foam is molded or bonded to a flexible sleeve which fits over the user's finger.

The appellant argues that Drulias does not teach a removable tip attached to a handle. The examiner agrees with this statement however it was never suggested that Drulias teach a tip that is attached to a handle. The reference of Drulias is used solely to show the foam material on an end portion of a finger brush.

The appellant also argues that Robertelli is capable of rotating at a speed up to approximately 10,000 revolutions and this rpm is not for self cleaning purposes of an adult or a child. This statement is the applicant's opinion of what is considered "self" cleaning. It is clear

that this device is clearly capable of being used by a user themselves to clean their teeth. There is nothing preventing the device from being used in this manner. The structural elements are still the same and therefore, it is considered intended use of the invention as to how the device is to be used.

Further the limitation that the cleaning tips are dimensioned for use within a vestibule of children 1-4 years old is again considered to be intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentable distinguish the claimed invention from the prior art. If the prior art is capable of performing the intended use, then it meets the claim. Since the cleaning tips are clearly capable of being used in a child of 1-4 years old mouth, the claim limitations are met by the prior art. The claim provides no structural difference between a 1-4 year olds cleaning tip and an adult cleaning tip and therefore the limitation holds no patentable weight. Age does not determine size of mouth. These are relative sizes that vary with each individual, whether child or adult.

Issue 14: Claims 45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, Boland, Carr, Drulias and Blaustein as applied to claim 44 above and further in view of Hammond (PGPub 20020008047) or Fischer, Robertelli, Carr, Drulias and Blaustein as applied to claim 44 above and further in view of Hammond (PGPub 20020008047).

The appellant does not provide any additional arguments which have not been addressed in the issues above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Shay Karls

/Shay L Karls/

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